

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 26, 2009

SHANNON RICHARD HUDSON v. STATE OF TENNESSEE

Appeal from the Criminal Court for Hamilton County
Nos. 241103 & 270418 Don W. Poole, Judge

No. E2009-00362-CCA-R3-PC - Filed February 9, 2010

The Petitioner, Shannon Richard Hudson, appeals pro se from the Hamilton County Criminal Court's dismissal of his untimely filed petition for post-conviction relief from his convictions for two counts of aggravated sexual battery and one count of attempted aggravated sexual battery and from his effective twenty-seven-year sentence. On appeal, the Petitioner contends that principles of due process require the tolling of the applicable statute of limitations. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which D. KELLY THOMAS, JR., and CAMILLE R. MCMULLEN, JJ., joined.

Shannon Richard Hudson, Whiteville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; and William H. Cox, III, District Attorney General, for the appellee, State of Tennessee.

OPINION

This case results from the Petitioner's convictions regarding his then eight-year-old niece. This court affirmed the Petitioner's convictions, and his application for permission to appeal to the Tennessee Supreme Court was denied on August 13, 2007. See State v. Shannon Richard Hudson, No. E2005-02859-CCA-R3-CD, Hamilton County (Tenn. Crim. App. Apr. 27, 2007), perm. app. denied (Tenn. Aug. 13, 2007). On December 10, 2008, the Petitioner delivered a petition for post-conviction relief to prison authorities, and the petition was filed on December 15, 2008.

In his petition for post-conviction relief, the Petitioner alleged that appellate counsel's December 7, 2007 letter to him led him "to believe that he was still being represented by counsel and therefore precluded from filing pro se pleadings such as a petition for post-conviction relief." The letter stated:

I am writing to inform you that the Court of Criminal Appeals has denied your appeal, and the Tennessee Supreme Court has denied the request for permission to appeal. . . .

I have contacted the TDOC and learned that they do not have a copy of the order where [the trial court] merged counts 1, 2, and 3 together. I personally went to the Hamilton County Criminal Court Clerk's office to make sure that they would send that order to the TDOC. According to the TDOC, your sentence should be corrected within thirty days. I will follow up with them to make sure that is done.

Once I confirm that your sentence has been corrected, I will be closing my file as my representation of you is concluded.

The trial court dismissed the Petitioner's petition for post-conviction relief as untimely. The court found that counsel's letter was not misleading and that the Petitioner was not precluded from timely filing a petition for post-conviction relief after its receipt.

On appeal, the Petitioner contends that the trial court erred in dismissing the petition for post-conviction relief because due process required the tolling of the applicable statute of limitations. The State contends that the trial court properly dismissed the petition because it was untimely filed. We agree with the State.

A petition for post-conviction relief must be filed within one year of the final action by the highest state appellate court to which an appeal is made or within one year of the trial court's judgment becoming final. T.C.A. § 40-30-102(a) (2006). The record reflects that the final action in this case was the Tennessee Supreme Court's denial of permission to appeal, which was filed on August 13, 2007. The petition was not filed within one year of that date.

The Code provides for tolling of the post-conviction statute of limitations in certain instances:

- (1) The claim in the petition is based upon a final ruling of an appellate court establishing a

constitutional right that was not recognized as existing at the time of trial . . . ;

(2) The claim in the petition is based upon new scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or

(3) The claim asserted in the petition seeks relief from a sentence that was enhanced because of a previous conviction and the conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid

Id. at (b)(1)-(3). In addition, principles of due process may allow tolling of the statute of limitations in limited circumstances. See Burford v. State, 845 S.W.2d 204, 208 (Tenn. 1992) (“due process requires that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner”); see also Seals v. State, 23 S.W.3d 272, 279 (Tenn. 2000) (“a petitioner who is mentally incompetent is denied an opportunity to raise a claim in a meaningful manner unless the statute of limitations is tolled during the period of mental incompetence”). Misrepresentations by counsel may toll the post-conviction statute of limitations. Williams v. State, 44 S.W.3d 464, 468 (Tenn. 2001). However, such misrepresentations must constitute more than counsel’s mere negligence. Id. at 468 n.7.

Given the allegations of the post-conviction petition, due process does not permit tolling of the statute of limitations. Trial counsel’s letter stated to the Petitioner that the sentence “should be corrected within thirty days” and that “[o]nce I confirm that your sentence has been corrected, I will be closing my file as my representation of you is concluded.” (emphasis added). The trial court found that even if the Petitioner interpreted counsel’s statement as “my representation of you will be concluded,” the letter conveyed that the Petitioner’s appeals process had ended. Thus, the Petitioner was on notice that the period for the filing of a post-conviction petition had begun. See Brown v. Jones, 928 S.W.2d 453, 456 (Tenn. Crim. App. 1996) (“Ignorance of the [post-conviction] statute of limitations is not an excuse for late filing”). Moreover, the Petitioner does not explain his failure to file a petition for post-conviction relief in the nearly one year following the receipt of counsel’s letter. If the Petitioner believed he was represented by counsel, he had ample opportunity to request that counsel prepare and file a petition on his behalf. Upon that

request, counsel could have clarified that his representation of the Petitioner had ended. We conclude that principles of due process do not require the tolling of the post-conviction statute of limitations in this case. The Petitioner is not entitled to relief.

In consideration of the foregoing and the record as a whole, we affirm the judgment of the trial court.

JOSEPH M. TIPTON, PRESIDING JUDGE